85-1506

Supreme Court, U.S.
FILED
MAR 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

KENNETH B. QUANSAH, JR.,
Petitioner,

v.

CTS PRINTEX CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

KENNETH B. QUANSAH, JR.
Petitioner, pro se
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QUESTION PRESENTED

Did the U.S.Court of Appeals for the Ninth Circuit unmistakably dismiss petitioner's;

1. appeal for failure to properly state any claim upon which relief may be granted while petitioner properly stated many claims including claims under Title VII, Section 1981 and Section 1983 in his complaint in the district court;

2. appeal and did not deprived petitioner from his freedom to negotiate for an equitable initial starting wage rate nor discriminated against him on grounds of his race, national origin thus, violated his Civil Rights under First Amendment, Thirteenth Amendment and Fourteenth Amendment?

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PARTIES TO THE PROCEEDING

KENNETH B. QUANSAH, JR.,
Petitioner,

v.

CTS PRINTEX CORPORATION,
Respondent.

OPINION BELOW

Petitioner filed a complaint in Equal Employment Opportunity Commission and State of California Department of Fair Employment and Housing concurrently against respondent CTS Printex Corporation. The State Agency gave a determination. A copy is attached hereto as Appendix 7. EEOC did not hold any hearing herein, acquiesced in with respondent and dismissed petitioner's claims. EEOC further alleged nine new employees were hired together with petitioner and two were hired at a

higher wage rate. According to EEOC one was an African Black. Petitioner claims an African Black was hired about a year after he was hired. However, that African Black did not have U.S. Government permit to work and in few months later he was expelled from work. Copies of EEOC determination are attached hereto as Appendix 6.

Petitioner filed a complaint in U.S. District court for the Northern District of California. The District court filed an order granting respondent's motion for summary judgment on December 14, 1984. A copy is attached hereto as Appendix 5. The District court also filed a judgment on December 14, 1984. A copy is attached hereto as Appendix 4. Petitioner filed an appeal and the Appeals Court for the Ninth Circuit filed a memorandum on November 12, 1985

to dismiss the appeal. A copy is attached hereto as Appendix 3. The petition for rehearing was filed on November 25, 1985 and it was denied in an order dated December 17, 1985. A copy is attached hereto as Appendix 2.

JURISDICTION

The jurisdiction of this court is invoked 28 U.S.C. § 1254(1). The U.S. Court of Appeals for the Ninth Circuit dismissed petitioner's appeal for failure to properly state any claim upon which relief may be granted in a memorandum dated November 12, 1985. Consequently, petitioner has averred 28 U.S.C. § 1291 for the purpose of jurisdiction in the Appeals court. Petitioner also cited 28 U.S.C. § 1343a in his original complaint in the

district court. Petitioner filed a complaint in EEOC and the State Agency. As a result both agencies gave notice of right to sue letters and Petitioner attached these letters to his original complaint to pre-empty the subject matter jurisdiction from further arguments. The petition for rehearing was filed on November 25, 1985. A copy is attached hereto as Appendix 8. The petition for rehearing was denied in an order dated December 17, 1985. Petitioner's notice of appeal for review in U.S.Supreme Court was filed on January 13, 1986 in U.S.Court of Appeals for the Ninth Circuit. A copy is attached hereto as Appendix 10.

STATUTE INVOLVED

The statutes involved are the Civil

Rights Act of 1870, Section 1981; the Civil Rights Act of 1871, Section 1983 and the Civil Rights Act of 1964, Title VII, 42 U.S.C. §§ 2000e et seq., particularly 42 U.S.C. §§ 2000e-2(a), 2000e-2(j).

Portions of these statutes are provided in relevant parts and attached hereto as Appendix 1.

STATEMENT OF THE CASE

Definitions: "Quansah and Petitioner are used in place of the personal pronoun I. Printex and Respondent are used in place of CTS Printex Corporation".

Quansah filed an application for employment in Printex a manufacturer of printed circuit boards in Mountain View California now located in Fremont, California for a position in Quality Control Department. In about a week

Quansah was told to come to work without a pre-employment interview to negotiate his inotial wage rate. On December 8, 1982 about 3:00 p.m. Quansah arrived in Printex to work. The employment representative took Quansah into an office and spoke briefly, the personnel manager had left earlier but she promised Quansah should work and he will be alright. Quansah decided to work hence, a written application for employment is part of a contract for employment. Furthermore, in State of California a contract for work, labor and services does not have to be in writing. Quansah obviously agreed to work despite the absence of pre-employment interview to negotiate his initial wage rate. There was a mandatory two hour overtime that day and there was the need for more people to work.

Quansah therefore worked the extra two hours.

Quansah claims he applied for a production control job in Printex about one month earlier and he was given a pre-employment interview to negotiate his initial wage rate but he was not hired.

Quansah went to work the next day on December 9, 1982 and when he asked the employment representative about his initial wage rate she told him he will receive three dollars forty cents ($3.40) an hour and a night differencial until the personnel manager negotiates his initial wage rate whereby he will also receive a 'back pay'. Quansah noticed from all other employees on his first day that Printex hired them after an interview and salary/wage negotiations. Quansah

also noticed all the employees with college degrees were hired on a salary or at a reasonable wage rate and they did not know anything about the task they were hired to perform. Quansah further noticed there was no fixed wage rate for a newly hired employee.

The representative herein, told Quansah not to quit his job hence, the department manager will negotiate his initial wage rate. The representative said the personnel manager had told the department manager to negotiate Quansah's wage rate. Quansah claims he has a college degree, capable and has the right to negotiate his wage rate before he performs any task. However, Printex deliberately denied him that right. Consequently, when Quansah received his 'pay check' for the first week he realized the check was drawn at

the minimum wage rate of three dollars and thirty five cents ($3.35) contrary to three dollars and forty cents ($3.40) an hour the representative promised until the department manager negotiate his initial wage rate. Quansah promptly complained to the employment representative but she again promised the department manager will negotiate his initial wage rate.

Quansah also noticed all his records in the personnel office were up-dated December 9, 1982 in contradictory to December 8, 1982 when he was hired. Quansah claims this misrepresents him on grounds of seniority merits and in the computation of time for benefits therefore constituted fraud. However, Printex admitted this fraud in their answer to Quansah's complaint in the district court.

During the ninety days probational review the department manager did not attend to negotiate his initial wage rate. The manager was out of the city therefore the employment representative conducted his review. The employment representative then told Quansah the same situation happened to some other employees previously whereby their initial wage rates were negotiated afterwards and they received 'back pay'. Finally during the nine months procedure review the department manager attended his review. Quansah told him he did not have a starting wage rate but he declined to negotiate. The manager got angry and placed Quansah on another ninety days probational period for no reason. The manager then refused to give Quansah the percentage review raise he had given to all other

employees although he was still training the newly hired employees. The department manager told Quansah he was not earning well in Printex therefore he did not negotiate his wage rate. The department manager resigned in few months thereafter. Quansah again told the newly hired department manager about his wage rate and the newly hired personnel manager hence the former personnel manager also resigned. Quansah claims both managers did not negotiate his wage rate on grounds that they were newly hired. Quansah felt he was misrepresented and therefore told both managers he will file a complaint in EEOC to negotiate his initial wage rate. Quansah then filed a complaint in EEOC while he still works in Printex.

Quansah noticed when any white or non African applicant was employed to do the

same work he was doing Printex administration and the department manager promoted that employee to a lead supervisor position after Quansah has trained that employee with the help of his co-workers he trained. Quansah claims Printex has promoted four employees consecutively to the lead supervisory position when Quansah should have been promoted. Unfortunately, all such lead supervisors resigned in few weeks after they were promoted to that position. Quansah claims he has been in Printex longer than the employees doing the same task and he was the first to operate some machines in performing some specified task. Quansah claims he has a college degree, capable but Printex kept promoting new employees who were not Africans and who did not have any college degree herein who could not do the work

well to lead supervisory position. Quansah claims this is an invidious de facto discrimination.

Quansah claims as a result of the above Printex duplicatedly breached the underlined contract for work herein his last wage rate at his previous employment written on his application for work was binding. It is clear that every employment is a contract for work, labor and services herein, it does not have to be in writing according to State of California law.

Quansah claims as a result of all the above Printex unreasonably discriminated against him on grounds of his race, deprived him from his freedom to negotiate for an equitable initial wage rate thus, violated his Civil Rights under First Amendment, Thirteenth Amendment and Fourteenth Amendment.

The State Agency issued a notice of right to sue letter. EEOC gave a determination and issued a notice of right to sue letter. The district court granted Printex motion to dismiss. The Appeals court also dismissed the appeal. Quansah's petition for rehearing was denied. Quansah herein filed a notice of appeal in the Appeals court for a review in U.S.Supreme Court on January 13, 1986.

Quansah seeks to recover his cost of litigation and Attorney fees if permissible according to the Civil Rights Attorney fees award Act of 1976, 42 U.S.C. § 1988.

Quansah wants to appear in U.S. Supreme Court to argue all relevant issues he could not present.

*

STATEMENT OF REASONS

Quansah argues his endeavor for fairness is the ultimate goal for this litigation when an irresponsible administration can not survive the laws under this jurisdiction. Quansah therefore alleges Printex has no remedy to his complaint and to claim his complaint did not properly state any claim upon which relief may be granted.

In the very beginning of this case Quansah stated claims under Title VII, Section 1981, Section 1983, constitutional slavery/involuntary servitude, negligence and fraud in his original complaint in the district court. A copy of his complaint is attached hereto as Appendix 9 for review by this court. Quansah argues a prima facie observation of his complaint demonstrates his complaint

stated claims. Quansah argues, respondent Attorney should not confuse the substance of his complaint and the fact that he was put to work therefore he was not discriminated. Herein, then allege Quansah did not state facts sufficient to constitute a claim to impede or delay this case. Quansah argues, respondent Attorney alleged in the Appeals court that he was given a periodic review raise and for that reason pre-emptied his claims against Printex. Quansah argues, his periodic review raise which was less than the raise every other employee received in his department was not his initial wage reconciliation. Quansah argues, Printex alleged failure to state facts sufficient to constitute a claim to confuse and frustrate the subject matter claims. Quansah argues this

court is at this juncture obligated to substantiate what is a claim. See Block v Neal, 75 L ed 2d 67, 103, S Ct (1983); Conley v Gibson, 355 US 41, 2 L ed 2d 80, 78 S Ct 99 (1957); Indian Towing Co. v United States, 350 US 61, 100 L Ed 48, 76 S Ct 122 (1955); Johansen v United States, 343 US 427, 96 L Ed 1051, 72 S Ct 849 (1952); Rayonier, Inc. v United States, 352 US 315, 319, 1 L Ed 2d 354, 77 S Ct 374 (1957); Seaboard Coast Line Railroad Co. v United States, 473 F 2d 714 (CA5 1973); United States v American Trucking Assos., 310 US 534, 84 L ed 1345, 60 S Ct 1059 (1940); United States v Brown, 348 US 110, 111, 99 L Ed 139 75 S Ct 141 (1954); United States v Muniz, 374 US 150, 160, 10 L Ed 2d 805, 83 S Ct 1850 (1963).

Quansah alleges, Printex is negligent by denying him an interview to negotiate

his initial wage rate. Quansah argues, interviewing and wage negotiations were primarily Printex administrative procedures. Quansah alleges, Printex deliberately denied him the pre-employment interview to negotiate his initial wage rate and as a result he suffered lost wages when all other employees were paid higher wages. See above citations.

Quansah argues, he alleged discrimination in his original complaint and the mere averment of discrimination was sufficient to constitute a claim for relief. Quansah alleges, EEOC determination concluded that EEOC found no reasonable cause to Quansah's claim for discrimination however, EEOC concluded that all the employees were interviewed and some were paid higher wages. Quansah argues, herein, he was

denied the pre-employment interview to negotiate his initial wage rate therefore that demonstrated an invidious de facto discrimination. Quansah argues his claim for Title VII is apparent to the circumstances of this matter. Quansah alleges he filed an application for employment in Printex and Printex denied him an interview to negotiate his wage rate although he was put to work. Quansah argues all other employees mostly whites or non Africans were interviewed to negotiate their initial wage rates. Quansah alleges Printex called him to work and paid him a minimum wage of $3.35 an hour at the end of the work week while his application for employment was binding. Quansah argues, he has four years of college therefore insisted to know his initial wage rate before he was put to work but

Printex employment representative told him to work and he will be alright. Consequently, Printex refused to pay the equivalent wage rate at his previous employment which was written on his application for employment. Quansah alleges he was put to work but it did not estopped Printex from his claims. Quansah argues he took this case to EEOC and the State Agency for settlement while he was still working in Printex. Quansah alleges he was privileged to become the lead supervisor in his department hence there was no lead supervisor in that period and he had the seniority merits as well as being capable. Quansah argues, furthermore, he was training the new employees in his department in the same period but Printex denied him the supervisory position. Quansah alleges, Printex

denied him the lead supervisory position in four consecutive periods and hired applicants into his department who neither had any college degree nor knew anything about the work in the department and promoted them into the lead supervisory position after Quansah has trained them with the help of his co-workers. However, immediately after those employees were promoted into lead supervisory position they resigned in few months. Quansah argues all such lead supervisors were whites or non Africans and this further demonstrated an invidious de facto discrimination. Quansah alleges he did not receive the appropriate periodic review raise from former department managers and he was neither questioned for poor work nor queried for poor work when this case was still in the judicial process.

Quansah argues, when all other employees received the maximum raise he did not. Quansah argues, subsequently before this case was docketed in this court Printex gave him a reasonable periodic raise and a review for his good work. See Belknap, Inc v Hale, 77 L Ed 2d 798 (1983); Bevery v Lone Star Lead Construction Corp., 437 F 2d 1136 (CA5 1971); Castro v Beecher, 459 F 2d 725 (CA1 1972); Chance v Board of Examiners, 458 F 2d 1167 (CA2 1972); Fekete v U.S.Steel Corp., 424 F 2d 331 (CA3 1970); Flowers v Local 6, Laborers International Union of America, 431 F 2d 205 (CA7 1970); Jones v Lee Way Motor Freight, Inc., 431 F 2d 245 (CA10 1970); Love v Pullman Co., 404 US 522, 30 L Ed 679, 72 S Ct 616 (1972); McDonald v Santa Fe Trail Transp. Co., 427 US 273, 279, 96 S Ct 2574, 2578,

49 L Ed 493 (1976); Quarles v Philip Morris Inc., 279 F Supp. 505 (ED VA 1968); Robinson v Lorillard Corp., 444 F 2d 791, 800 (CA4 1971); W.R.Grace & Co. v Local 759, 76 L Ed 2d 298 (1983); Zipes v Trans World Airlines, Inc., 455 US 385 7 L Ed 2d 234, 102 S Ct 1127 (1982).

Quansah argues, he alleged Section 1981 and Section 1983 in his original complaint in the district court. Apparently, every application for employment is a contract for work, labor and services. Quansah argues, State of California law provides that a contract for work, labor and services does not have to be in writing. See Union Fish Co. v Erickson, 248 US 308, 63 L ed 261, 39 S Ct 112 (1919). The above case is only cited for the purpose of reasoning contracts under

State statute of frauds although it is maritime contract case. Quansah herein, further argues, his application for employment was part of his contract for work and therefore was binding. Quansah argues, in the absence of an initial wage negotiations it was binding for Printex to pay him an equivalent of the last wage rate at his previous employment. Quansah argues, herein, his claim for Section 1981 is apparent. Quansah alleges, State of California statute of frauds permit initial agreement either verbal or in writing in the making of contracts for work. Quansah argues, his application was binding and therefore Printex refusal to pay him according to his last wage rate at his previous employment which was written on his application for employment was a deprivation under color

of State law. Apparently, Quansah's Section 1983 claim is obvious. See Kossick v United Fruit Co., 365 US 731, 6 L Ed 2d 56, 81 S Ct 886 (1961); Cf. Jones v Alfred H. Mayer Co., 392 US 409, 441-443, n78, 20 L Ed 2d 1189, 88 S Ct 2186, 47 Ohio Ops 2d 43 (1968); Sullivan v Little Hunting Park, Inc., 396 US 229, 24 L Ed 2d 386, 90 S Ct 400 (1969); Runyon v McCrary, 427 US 160, 49 L Ed 2d 415, 96 S Ct 2586 (1976).

Quansah argues, he alleged constitutional slavery/involuntary servitude hence, Printex can not put him to work and pay him at the Federal minimum wage rate. Quansah argues, Printex admitted his claim for constitutional slavery/involuntary servitude together with his claim for fraud in Printex answer to his complaint and that estopped him from

further arguments. Quansah alleges, by virtue no employer can put any applicant to work without an agreement to the applicant's wage rate. Quansah is indeed vexed and Printex must yield. Quansah alleges, the eye sees not itself and if his eyes can see himself he must rest his arguments.

Quansah alleged, he noticed that all his records in Printex personnel office were up dated December 9, 1982 in contradictory to December 8, 1982 when he was put to work. As a consequence, Printex Attorney argued in the Appeals court that Quansah was hired on December 9, 1982. Quansah argues, this was not a crafty procedure to hire a cheap labor. Quansah argues, this misrepresents him on grounds of seniority merits as well as in the computation of time for benefits and

obviously constituted fraud. Quansah alleges, however, Printex has admitted this fraud in Printex answer to his complaint in the district court. Quansah argues, he is relief from arguments at this juncture for these claims but such claims demonstrate the racial employment practices in Printex.

Quansah alleges where ever he has to work must be fair and this case must be settled by our judicial system. Quansah argues, he still works in Printex. Apparently, he is injured and hurting from lost wages over the long process of our judicial system.

As a result of all the above Quansah argues, Printex deprived him from his freedom to negotiate an equitable initial wage rate and discriminated against him on grounds of his race, national origin thus, violated his

Civil Rights under First Amendment, Thirteenth Amendment and Fourteenth Amendment.

Quansah seeks to recover his cost of litigation and Attorney fees if permissible by the Civil Rights Attorney fees award Act of 1976, 42 U.S.C. § 1988. See Runyon v McCrary, 427 US 160, 49 L Ed 2d 415, 96 S Ct 2586 (1976).

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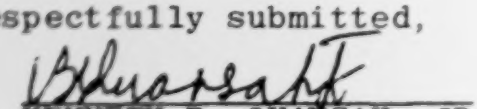
CONCLUSION

Quansah is entitled to the total amount of damages of five million dollars ($5,000,000.00) or a reasonable amount of damages that might seem substantial in this court's view.

Quansah still works in CTS Printex Corporation and fairness must prevail since this is a defeat to its administration and its crafty procedures. Apparently such a deliberate deprivation is a burden and contrary unreasonable to the constitution at hand.

DATED: San Jose, California
February 24, 1986

Respectfully submitted,



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CERTIFICATE OF SERVICE

On March 10, 1986 I served the attached document entitled Petition For a Writ of Certiorari by mailing two copies certified, first class, postage prepaid to respondent Attorneys as follows:

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Attorneys for Respondent
CTS Printex, Inc.

Executed this 10th day of March, 1986 in San Jose, California.

/s/ KBQuansah

KENNETH B. QUANSAH, JR.
Petitioner, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)289-9947

Subscribed and Sworn to Before me this 10th day of March 1986.
Witness my hand and official seal.
/s/MARIA L. LAMOTHE
NOTARY PUBLIC
My Commission Expires March 4, 1988.

APPENDIX 1

Statute Involved

Section 1981 provides in full:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other".

Section 1983 provides in full:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

42 U.S.C. § 2000e-2(a) provides in full:

"It shall be an unlawfull employment practice for an employer-
1. to fail or refuse to hire or to

discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
2. to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin".

42 U.S.C. § 2000e-2(j) provides in full:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization or joint labor management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or

other area, or in the available work force in any community, State, section, or other area".

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: DEC. 17, 1985

NO. 85-1559

USDC NO. C-84-4982 WWS

ORDER

KENNETH B. QUANSAH, JR.,
Plaintiff/Appellant,

vs.

CTS PRINTEX CORPORATION,
Defendant/Appellee.

Before: ANDERSON, FARRIS and NELSON
Circuit Judges.

Plaintiff-Appellant's Petition

for Rehearing is DENIED.

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: NOV. 12, 1985

NO. 85-1559

USDC NO. C-84-4982 WWS

MEMORANDUM

KENNETH B. QUANSAH, JR.,
Plaintiff-Appellant,

vs.

CTS PRINTEX CORPORATION,
Defendant-Appellee.

Submitted: October 10, 1985 - San Francisco, CA.

Appeal from the United States District Court for the Northern District of California
William W. Schwarzer, District Judge Presiding

Before: ANDERSON, FARRIS and NELSON, Circuit Judges

Kenneth B. Quansah, Jr. appeals from the district court's order granting a motion for summary judgment in favor of his employer, CTS Printex, Inc. Quansah, a black man of Ghanese national

origin, commenced this action in pro per in the Northern District of California, alleging (i) violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., (ii) violation of 42 U.S.C. § 1981; (iii) violation of 42 U. S.C. § 1983; (iv) "failure to contract"; (v) "negligence"; (vi) "constitutional slavery/involuntary servitude"; and (vii) "fraud". This court must determine whether Quansah has stated any claim upon which relief may be granted and if so, whether any material fact remains at issue.

Insofar as this court must construe liberally the allegations of a pro se complainant, Haines v. Kerner, 404 U. S. 519, 520 (1972); Franklin v. Murphy, 745 F.2d 1221, 1235 (9th Cir. 1984), Quansah may have set forth a colorable claim of wage rate discrimination under Title VII.

However, Quansah offered no substantiation of his allegations beyond that contained in his original complaint; he provided no evidentiary response to CTS's denial of his Title VII claim (and indeed, all of his claims) in its motion for summary judgment and affidavits in support thereof.

Once the movant has adduced sufficient factual evidence to rebut the complainant's allegations and sustain his burden of demonstrating the absence of a genuine issue of material fact, the opposing party may not defeat summary judgment by relying solely on the allegations contained within his complaint. He must present "significant probative evidence tending to support" those allegations. First National Bank v. Cities Service Co., 391 U.S. 253, 290 (1968); Franklin v. Murphy, 745 F.2d

1221, 1235 (9th Cir. 1984); General Business Systems v. North American Philips Corp., 699 F.2d 965, 971 (9th Cir. 1983). Because Quansah put forth no such evidence, no material fact is at issue and summary judgment is properly granted as a matter of law. See, e.g., Betaseed, Inc. v. U & I Inc., 681 F.2d 1203, 1207 (9th Cir. 1982); Thomsen v. Western Electric Co., 680 F.2d 1263, 1265 (9th Cir.), cert. denied, 459 U.S. 991 (1982); Ron Tonkin Gran Turismo, Inc. v. Fiat Distributors, Inc., 637 F.2d 1376, 1381 (9th Cir.), cert. denied, 454 U.S. 831 (1981).

AFFIRMED.

FOOTNOTE

1. Quansah did not state a proper claim with respect to his other charges; he failed to assert the material elements of the allegations.

2. CTS's motion for summary judgment was granted after Quansah twice failed to appear at scheduled hearings.

APPENDIX 4

UNITED STATES DISTRICR COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FILED: DEC. 14, 1984
NO. C-84-4982 WWS

JUDGMENT

KENNETH B. QUANSAH, JR.,
Plaintiff,

v.

CTS PRINTEX CORPORATION & EEOC
Defendants.

The Court having considered the pleadings and the matter having been duly submitted;

IT IS HEREBY ORDERED AND ADJUDGED that:

1. Defendant CTS Printex, Inc.'s motion for summary judgment is granted.

2. Summary judgment in favor of the defendant CTS Printex, Inc. shall be entered accordingly.

3. The parties shall bear their own costs.

WILLIAM W. SCHWARZER
United States District
Judge

APPENDIX 5

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FILED: DEC. 14, 1984
NO. C-84-4982 WWS

KENNETH B. QUANSAH, JR.,
Plaintiff,

v.

CTS PRINTEX CORPORATION & EEOC,
Defendants.

ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Hearing Date: December 14, 1984
Time: 11:00 a.m.
Place: Courtroom 9

The Motion of Defendant CTS Printex, Inc. for Judgment on the Pleadings, or, in the Alternative, for summary Judgment, came on regularly for hearing before the Hon. William W. Schwarzer, United States District Judge, on December 14, 1984 on notice duly and regularly given for the second hearing. Kenneth B. Quansah, Jr., plaintiff failed to appear and David S. Bradshaw and Barbara C. Stikker appeared

as counsel for defendant CTS Printex, Inc.

The matter having been argued and submitted and it appearing from the Memorandum of Points and Authorities in Support of Motion of Defendant CTS Printex, Inc. for Judgment on the Pleadings, or, in the Alternative for Summary Judgment, that the Complaint does not state facts sufficient to constitute a claim for relief,

IT IS ORDERED that Defendant CTS Printex, Inc.'s Motion for Judgment on the Pleadings be and hereby is granted and that plaintiff is denied leave to amend.

DATED: 12/14/84

/s/William W. Schwarzer
WILLIAM W. SCHWARZER
United States District Judge
Northern District of California

APPENDIX 6

U.S.EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
280 South First St., Rm. 4150
San Jose, CA 95113
Telephone (408)291-7352

April 17, 1984

Mr. Kenneth Quansah
2665 Tilton Court
San Jose, CA 95121

Re: Charge #
104 84 0082
Quansah v
CTS Printex
Corp.

Dear Mr. Quansah:

The Commission has been unsuccessful in its attempts to contact you, therefore this letter is to inform you of the current status of your charge of employment discrimination.

You have alleged that Printex Corporation discriminated against you by denying you an equitable starting wage rate and by giving you and unsatisfactory review on or about 7/23/83.

A review of the evidence indicates that employees of both different races and National Origins were treated in the same manner as you both with respect to your starting wage rate and the company's evaluation policies and procedures. In fact, the evidence demonstrates that you were compensated at the same starting wage rate as 7 of 9 newly hired employees. Of the 2 employees hired at a higher wage rate, one was significantly an African Black.

With respect to your evaluation, there is no evidence to show that the Company deviated from its customary evaluation procedure. In fact, the record reflects

that of 8 employees disciplined, 4 received more stringent penalties than you for comparable conduct.

Based on the record as a whole, the Area Director will be issuing a final determination in your case within the next week.

If you have any additional information or further questions regarding your case, please contact this office at (408) 291 7352.

Very truly yours,

/s/Charles Carattini
for Mary F. Evans
Senior Equal Opportunity
Specialist

U.S.EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
280 South First St., Rm. 4150
San Jose, CA 95113
Telephone (408)291-7352

Kenneth Quansah Charge# 104 84 0082
2365 Tilton Court
San Jose, CA 95121 Charging Party

CTS PRINTEX CORPORATION
1950 Colony Street
Mountain View, CA 94043 Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

The Charging Party alleged that the Respondent discriminated against him because of his Race, Black and National Origin, Ghanese, by denying him an equitable starting wage rate, and giving him an unsatisfactory review, placing him on probation on or about 7/23/83.

Examination of the evidence indicates that there is not reasonable cause to believe that this allegation is true. No determination is made as to any other issue raised by or which might be construed to have been raised by the subject charge.

This concludes the Commission's processing of this charge. Should the Charging Party wish to pursue this matter further, the Charging Party may do so by filing a private action in Federal District Court against the

Respondent named above within 90 days of receipt of this letter and by taking the other procedural steps set out in the attached Notice of Right To Sue.

On Behalf of the Commission:

DATE: 4/23/84 /s/Charles F. Carattini
CHARLES F. CARATTINI
Area Director

Enclosures: Copy of Charge
Notice of Right To Sue

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
U.S. Federal Courthouse Build.
280 South First St. Rm. 4150
San Jose, CA 95113

Kenneth B. Quansah
2665 Tilton Court
San Jose, CA 95121

Charge #
104 84 0082

NOTICE OF RIGHT TO SUE
(Dismissal)

No reasonable cause was found to believe that the allegations made in your are tru, as indicated in the attached determination.

Your request to the U.S.District Court should be made well in advance of the end of the 90-day period mentioned above.

On Behalf of the Commission

DATE: 4/23/84

/s/Charles F. Carattini
CHARLES F. CARATTINI
Area Director

CA DFEH

cc: CTS PRINTEX CORPORATION
1950 Colony Street
Mountain View, California 94043

APPENDIX 7

STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
888 N First St., San Jose, CA 95112
(408)277 1264

January 17, 1984

Case Name:
Quansah/CTS
Printex Corp.,

EEOC Charge #
104 84 0082

CTS Printex Corporation
1950 Colony Street
Mt. View, CA 94043
ATTN: Personnel Manager

NOTICE TO RESPONDENT AND COMPLAINANT

Dear Gentlemen:

Enclosed with respondent's copy of this notice is a copy of subject charge that has been referred to this agency by the Federal Equal Employment Opportunity Commission.....

Since the Department will not be issuing an accusation, this notice is also being sent to the complainant noted below as notification of the right to file a private civil suit in the California Superior Court. Any court action must be taken within one year of the date of this notice. Refer to California Government Code Section 12965(b).

Sincerely,
/s/SATISH K. WADHWA
District Administrator

cc: Kenneth Quansah
2665 Tilton Ct., San Jose, CA 95121

APPENDIX 8

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: NOV. 25, 1985

No. 85-1559

PETITION FOR REHEARING
pro-se

KENNETH B. QUANSAH, JR.,
Petitioner,

vs.

CTS PRINTEX CORPORATION,
Respondent.

1. Petitioner claims he was denied of preemployment interview and herein, a violation of his rights under Title VII of the Civil Rights Act of 1964, 42 U.S. C. § 2000e et seq. Apparently, this is a claim a relief can be granted but the Appeals Court overlooked this issue. Moreover, petitioner stated this claim in the District court but respondent did not answer this claim neither in the district court nor the Appeals court. Petitioner claims this is proven by their own record

on file in this court. Petitioner was denied a preemployment interview and that had nothing to do with his periodic performance reviews. Hence, every other employee had the periodic performance reviews which was mentioned in an additional filing by the respondent. Petitioner demonstrated this issue with his time card which shows he worked on December 8, 1982 while his employment records shows he was hired on December 9, 1982. Apparently, this proves petitioner was put to work without preemployment interview. Petitioner, the negro was called upon to come to work without pre-employment interview. Respondent also admitted petitioner worked on December 8, 1982 on their record.

2. Petitioner claims respondent's failure to make a contract made it binding for respondent to pay him

according to his wage at his previous employment. Again, the Appeals court overlooked this very important issue. Petitioner claims, State of California law allows one year to assert a claim under a contract and petitioner filed his claim within one year period.

3. Petitioner claims, he appeared at the first scheduled status conference and he can order the court reporter's record for the convenience of the Appeals court. Petitioner did not appear at the second status conference due to a mechanical accident during his journey on Highway 101 to the court but promptly telephoned the court before the scheduled time.

4. Petitioner seeks the Appeals Court to rehear this case and reconsider these issues.

Respectfully submitted,
/s/Kenneth B. Quansah, Jr.
KENNETH B. QUANSAH, JR

APPENDIX 9

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED: JUL. 16, 1984

No. C 84 4982 WWS

COMPLAINT FOR DAMAGES
AND PUNITIVE DAMAGES
pro-se

KENNETH B. QUANSAH, JR.,
Plaintiff,

vs.

CTS PRINTEX CORPORATION &
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Defendants.

I, KENNETH B. QUANSAH JR., Plaintiff pro-se complains of defendants CTS PRINTEX CORPORATION and EQUAL EMPLOYMENT OPPORTUNITY COMMISSION for cause of action alleges:

1. The jurisdiction of this court is invoked 28 U.S.C. § 1343(a). Plaintiff above lives in San Jose, California. Defendant CTS PRINTEX CORPORATION conducts a business in Mountain View, California. The defendant EEOC is a

government commission. The venue therefore is the judicial district defendants are licensed to do business or are doing business. Plaintiff avers 28 U.S.C. § 1391(c) for the subject matter venue.

FIRST CAUSE OF ACTION

1. Plaintiff sued for discrimination. Plaintiff claims for his Rights under 42 U.S.C. § 2000e et seq., particularly 42 U.S.C. §§ 2000e-2a(2), 2000e-2(j). Plaintiff claims it is ridiculous for a person with a United States degree to be put to work for a minimum wage against his will while all white persons with degrees were interviewed before they were put to work and not for a minimum wage. Moreover there is a national standard wage/salary for all degrees and there is no college or institution training students for the type of job plaintiff is

doing which makes him unqualified for this job.

2. Plaintiff sued for PRINTEX's failure to establish an initial contract agreement. Plaintiff alleges due to PRINTEX's inability to negotiate an initial contract wage it was binding for PRINTEX to pay plaintiff the wage he received at his last employment which was written on his application for employment he presented about a week before he was put to work. Plaintiff seeks for his right under 42 U.S.C. §§ 1981, 1983.

3. Plaintiff sued for negligence. Plaintiff alleges PRINTEX did not consider him as a college graduate and refused to treat him as is enjoyed by "white" college graduates. Plaintiff alleges PRINTEX refused to give him an

interview before he was put to work. PRINTEX only promised plaintiff "you will be alright so go to work".

SECOND CAUSE OF ACTION

1. Plaintiff sued for constitutional slavery/involuntary servitude. Plaintiff alleges no persons under the jurisdiction of the United States could be put to work for a wage against his will. Plaintiff alleges there should be an established contract agreement even if the occupation only pays the minimum wage to start.

2. Plaintiff sued for fraud. Plaintiff alleges he was put to work on December 8, 1982 but all his personnel records show he was hired on December 9, 1982 with the exception of his time card.

3. Plaintiff sued EEOC for acquiescing in all of the above to deprive him from his privileges. Plaintiff alleges he

took this matter to EEOC as well as the commissioner, State of California Department of Fair Employment & Housing concurrently but EEOC demonstrated to be lazy to check records and acquiesced in to deprive him. Plaintiff attaches hereto copies of all letters from EEOC and the State of California Department of Fair Employment & Housing for review.**

4. Plaintiff sued defendant CTS PRINTEX CORPORATION for all damages as a result of the above in the amount of five million dollars($5,000,000.00). Plaintiff also sued EEOC for damages in the amount of one hundred thousand dollars($100,000.00) as a result of the above. Plaintiff alleges he still works for CTS PRINTEX CORPORATION and has no opportunity of getting a fair wage hence, prays for relief and seeks to recover the total amount of damages brought against

above defendants.

/s/Kenneth B. Quansah, Jr.
KENNETH B. QUANSAH, JR.
Plaintiff, pro-se

** See Appendix 6 and Appendix 7.

APPENDIX 10

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: JAN. 13, 1986

NO. 85-1559

USDC NO. C-84-4982 WWS

NOTICE OF APPEAL
pro-se

KENNETH B. QUANSAH, JR.,
Appellant,

vs.

CTS PRINTEX CORPORATION,
Appellee.

Notice is hereby given that Appellant, pro-se Kenneth B. Quansah, Jr., appeals from this court's order on December 17, 1985 to the Supreme court of the United States pursuant to 28 U.S.C. § 1254(1).

Appellant claims the Appeals court for the Ninth Circuit overlooked the fact that he was denied a preemployment interview which was necessary to negotiate his initial wage rate hence all the employees who were hired before

and after Appellant were hired after an interview at a variable wage rates. The Appeals court herein, overlooked these essential issues and dismissed this case on the grounds that Appellant did not state a proper claim with respect to his other charges; he failed to assert the material elements of the allegations. Appellant's petition for Rehearing was thereafter denied.

/s/Kenneth B. Quansah, Jr.
KENNETH B. QUANSAH, JR.
Appellant, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)289-9947

Certificate of Service

On January 10, 1986 I served the attached document entitled NOTICE OF APPEAL by mailing copies first class, postage prepaid to the Attorneys for Appellee as follows:

Sheppard, Mullin, Richter & Hampton
Barbara C. Stikker (of counsel)
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

Executed this 10th day of January 1986 in San Jose, California.

/s/Kenneth B. Quansah, Jr.
KENNETH B. QUANSAH, JR.
Appellant, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)289-9947

(2)

Supreme Court, U.S.
FILED
APR 17 1987
JOSEPH F. SPANIOL, JR.
CLERK

Case No. 851506

In the Supreme Court of the United States

October 1986 Term

KENNETH B. QUANSAH, JR.,

Petitioner,

v.

CTS PRINTEX CORPORATION,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENT CTS PRINTEX, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SHEPPARD, MULLIN, RICHTER & HAMPTON
A Partnership Including
Professional Corporations
DAVID S. BRADSHAW
Four Embarcadero Center
Seventeenth Floor
San Francisco, California 94111

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Attorneys for Respondent
CTS PRINTEX, INC.

10 pp + foldout

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I

INTRODUCTION

The present Petition for Writ of Certiorari by Kenneth B. Quansah, Jr. (hereinafter "Quansah" or "petitioner") seeks to overturn a grant of a summary judgment motion, in opposition to which Quansah had refused to present any evidence. Quansah had sued his employer CTS Printex, Inc. (hereinafter "CTS" or "respondent") in the United States District Court for the Northern District of California. He conclusorily charged it, *inter alia*, with discrimination, specifically violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, 42 U.S.C. § 1981, and 42 U.S.C. § 1983. The crux of Quansah's allegations appear to be that he believed that he was not interviewed when he applied for work, and that he was denied the opportunity to "negotiate" an "initial contract wage."

CTS moved for summary judgment, presenting evidence that directly refuted Quansah's contentions. Affiant Katrina McCuiston averred that she in fact interviewed Quansah, and identified notations on his employment application as having been made by her at the time of the interview. Affiant Denise Dragony, CTS's Human Resources Manager, declared that Quansah has received four salary increases during his employment based on periodic performance reviews, that he is paid weekly by respondent and has accepted each and every paycheck offered to him, and that his employment is at will, and he is free to terminate at any time. In response to the motion, Quansah offered *no evidence whatsoever* in support of his claim, choosing instead to rely on the allegations of the Complaint.

The District Court granted CTS's motion, after giving Quansah a full and fair opportunity to establish the existence of a genuine issue of material fact. The granting of summary judgment by the District Court was subsequently affirmed by the United States Court of Appeals for the Ninth Circuit. The Court of Appeals held that because of Quansah's failure to present "significant probative evidence tending to support" the allegations contained in the Complaint, no material fact was at issue, and thus the summary judgment was proper as a matter of law.

II

QUESTIONS PRESENTED

The Petition for Writ of Certiorari raises two questions:

1. Did the United States Court of Appeals for the Ninth Circuit prop-

erly affirm summary judgment in favor of respondent where the petitioner failed to raise a material issue of fact in support of his claims?

2. Should the United States Supreme Court deny the Petition for Writ of Certiorari on the grounds of untimeliness?

III

STATEMENT OF THE CASE

On July 16, 1984, petitioner filed this lawsuit in *pro per* in the United States District Court for the Northern District of California. The Complaint alleged (1) violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*, (2) violation of 42 U.S.C. § 1981, (3) violation of 42 U.S.C. § 1983, (4) "failure to contract," (5) "negligence," (6) "constitutional slavery/involuntary servitude," and (7) "fraud."[1]

On September 6, 1984, respondent answered the Complaint, denying all of Quansah's allegations. On October 10, 1984, respondent filed a Motion for Summary Judgment, or in the Alternative, Judgment on the Pleadings. Respondent argued that the Complaint did not state facts sufficient to present a claim for which relief could be granted. In addition, respondent provided evidence by way of affidavit that directly refuted the petitioner's allegations. Quansah submitted no evidence at all in opposition to this motion, simply reiterating the belief expressed in his Complaint that he was treated unfairly.

The hearing on the motion was duly scheduled for December 7, 1984; however, the petitioner failed to appear at the hearing. On order of Hon. William W. Schwarzer, United States District Judge, the hearing was continued to December 14, 1984 to give the petitioner a further opportunity to present evidence. Quansah failed to appear at the second hearing. On December 14, 1984, the court granted respondent's Motion for Summary Judgment, and judgment in favor of CTS was entered on December 26, 1984.

---

[1] Also named as a defendent in the case was the Equal Employment Opportunity Commission (hereinafter "EEOC"). Prior to filing this suit, Quansah had filed a charge with the EEOC, alleging that CTS had discriminated against him on the basis of race and national origin. The EEOC determined against Quansah, stating that there was no reasonable cause to believe that Quansah's allegations are true. The Complaint charged that "EEOC demonstrated to be lazy to check records and acquiesced in to deprive [Quansah]". The EEOC's Motion to Dismiss was granted on December 14, 1984 and judgment entered on December 26, 1984. No appeal was taken from the judgment.

On or about January 11, 1985, Quansah filed a Notice of Appeal in the United States District Court for the Northern District of California. The parties filed and exchanged briefs, and on November 12, 1985, the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court. On December 17, 1985, the court denied Quansah's Petition for Rehearing.

On or about January 10, 1986, Quansah filed a purported "Notice of Appeal" with the United States Court of Appeals for the Ninth Circuit. The Petition for Writ of Certiorari was filed with the United States Supreme Court on March 12, 1986, *85 days after the Petition for Rehearing was denied.* The instant Petition, in addition to being untimely filed, raises "facts" and conclusory allegations that were not presented to the District Court, which petitioner advances as justifying review of the decision of the Court of Appeal.

IV

SUMMARY OF ARGUMENT

A review on writ of certiorari is a matter of judicial discretion, and will be granted *only* where there are "special and important reasons." This case presents no such circumstances. Petitioner simply seeks review of the decision of a federal Court of Appeals which affirmed the granting of summary judgment on the basis that no material fact was at issue. In the proceedings below, the petitioner failed to present any evidence in support of the allegations of the Complaint; his present attempt to set forth evidence that shows that his case has merit is simply too late. Thus, petitioner has failed to demonstrate any reasons supporting the granting of his petition. Moreover, review should be denied for the further reason that the Petition herein was filed over 60 days after the Petition for Rehearing was denied, and is thus untimely under Supreme Court rules.

V

ARGUMENT

A. *Petitioner Failed to Raise "Special and Important Reasons Therefor"; Accordingly, Review Should Not Be Granted.*

Rule 17 of the Rules of the Supreme Court provides that a writ of certiorari is a matter of *judicial discretion*, not a matter of right. It will be granted "only when there are special and important reasons therefor." Sup. Ct. R. 17.1. This rule, which gives guidance as to the character of reasons that the

Court will consider, cites such circumstances as whether the decision of a federal Court of Appeals conflicts with the decision of another Court of Appeals on the same matter, or whether a federal Court of Appeals had decided a federal question in conflict with a state court of last resort. Sup. Ct. R. 17.1(a). While the examples of the Rule do not "fully measur[e] the Court's discretion," this Petition does not show any considerations similar to those described therein.

The petitioner is attempting to appeal a summary judgment that was granted after he failed to present *any* evidence whatsoever in support of the allegations contained in the Complaint. Rule 56 of the Federal Rules of Civil Procedure specifically provides:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but *his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.*

Fed. R. Civ. P. 56(e) (emphasis added). *See also British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 951-52 (9th Cir.), *cert. denied*, 440 U.S. 981, 99 S.Ct. 1790, 60 L.Ed.2d 241 (1978).

In *First Nat. Bank of Ariz. v. Cities Service Co.*, 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569, the Court affirmed a summary judgment in favor of the defendant, holding that the plaintiff was *not* entitled to rely on the allegations contained in its complaint in the "absence of any significant probative evidence tending to support the complaint." 391 U.S. at 290. The Court of Appeals herein held that while Quansah "may have set forth a colorable claim of wage rate discrimination under Title VII," he failed to provide the District Court with any affidavit or other evidentiary response in support of the allegations contained in his original Complaint. Where a party offers no "significant probative evidence," and rests exclusively on the allegations of his pleading, no material fact is at issue and the moving party is entitled to judgment as a matter of law. *See, e.g., Compton v. Ide*, 732 F.2d 1429, 1434 (9th Cir. 1984); *Thomsen v. Western Elec. Co., Inc.*, 680 F.2d 1263, 1265 (9th Cir.), *cert. denied*, 459 U.S. 991, 103 S.Ct. 348, 74 L.Ed.2d 387 (1982). Thus, the Court of Appeals herein properly affirmed the judgment of the District Court.

The 1963 amendment to Rule 56(e), which had added the above-quoted portion of the rule, was specifically aimed at a situation like the present one. This

amendment was intended to overturn a line of cases in the Third Circuit which had allowed a party to defeat summary judgment by relying on the allegations contained in the pleadings.

> The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. The Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of [Rule 56].

Fed. R. Civ. P. 56 advisory committee note.

The Petition for Writ of Certiorari purports to raise new matters that petitioner apparently contends justify review by this Court. However, these "facts," which are no more than conclusory allegations, were not presented to the District Court below. It is well-settled that a reviewing court may *not* consider factual matters that were not presented to the trial court in opposition to a motion for summary judgment. *See, e.g., Garcia v. American Marine Corp.*, 432 F.2d 6, 8 (5th Cir. 1970); *Munoz v. International Alliance of Theatrical Stage Employees, etc.* 563 F.2d 205, 209 (5th Cir. 1977). Since the supplemental allegations contained in the Petition for Writ of Certiorari were not set forth in evidentiary form before the District Court, they should not be considered by this Court in determining whether to grant the Petition herein.

B. *Petitioner Failed to File The Petition On A Timely Basis; Accordingly, Review Should Not Be Granted.*

In addition to failing to present special or important reasons justifying review, the Petition is untimely. A Petition for Writ of Certiorari to review the judgment of a federal Court of Appeals *must* be filed within 60 days after the entry of judgment. Sup. Ct. R. 20.1. This 60-day period will not run, if a timely Petition for Rehearing is filed, until the Petition for Rehearing is denied. Sup. Ct. R. 20.4. A Petition for Rehearing in this matter was denied by the Court of Appeals on December 17, 1985. Eighty-five days later, on March 12, 1986, Quansah filed the Petition for Writ of Certiorari.[2] Clearly, this petition is "jurisdictionally out of time," and should be denied. *See* Sup. Ct. R. 20.3.

---

[2] An application to extend the time in which to file a Petition for Writ of Certiorari pursuant to Rule 29 of the Rules of the Supreme Court was never made in this matter, as the Petition itself clearly discloses. In any event, no such application was served on respondent. Sup. Ct. R. 29.3.

VI

CONCLUSION

This Petition for Writ of Certiorari presents this Court with no special or important considerations warranting review. The petitioner is appealing a summary judgment granted after he failed to present any evidence in support of the allegations contained in the Complaint, and after he twice failed to appear and argue his case before the District Court. The purported "facts" advanced by his Petition have been "raised" too late and should not be now considered. Respondent submits that the Court of Appeals correctly applied Federal Rule of Civil Procedure 56(e) to require entry of judgment as a matter of law against petitioner.

In addition, the Court lacks jurisdiction to grant the Petition for Writ of Certiorari because it was filed over 60 days following denial of Quansah's Petition for Rehearing by the Court of Appeals.

For these reasons, the respondent respectfully requests that the Petition for Writ of Certiorari be denied.

DATED: April 14, 1986

Respectfully submitted,
SHEPPARD, MULLIN, RICHTER & HAMPTON
DAVID S. BRADSHAW

By DAVID S. BRADSHAW
DAVID S. BRADSHAW
Attorneys for Respondent
CTS PRINTEX, INC.